BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TAMMY L. NORWOOD	)	
Claimant	)	
VS.	)	
	)	Docket No. 231,708
FF&P PARTNERS d/b/a TAYLOR FOOD MART	)	
Respondent	)	
AND	)	
	)	
NATIONAL UNION FIRE INS. CO. OF NY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the June 7, 2000 Award entered by Administrative Law Judge Pamela J. Fuller. The Appeals Board heard oral argument on November 8, 2000.

APPEARANCES

M. John Carpenter of Great Bend, Kansas, appeared for the claimant. James M. McVay of Great Bend, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a January 2, 1998 accident that occurred while claimant was driving home from work at respondent's Garden City, Kansas store.

Although claimant's accident occurred on her way home from work, Judge Fuller held that the accident nevertheless arose out of and in the course of her employment with respondent. The Judge concluded that the "intrinsic travel" exception to the "going and coming" rule[1] applied because claimant had been temporarily assigned to work at the Garden City store and was being compensated for her travel.

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[1] K.S.A. 1997 Supp. 44-508(f).

Respondent argues that Judge Fuller erred by finding that the intrinsic travel exception to the going and coming rule applies to this claim and by failing to apply the going and coming rule to deny this claim.

Conversely, claimant contends that the Award should be affirmed.

The issue before the Appeals Board on this appeal is whether the accident arose out of and in the course of claimant's employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds the Award of the ALJ should be affirmed. The Appeals Board agrees with the ALJ's analysis of the evidence as set forth in the Award. The Appeals Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein. In addition, the Appeals Board finds that claimant's accident falls within the special purpose exception to the going and coming rule.[2] As the provisions of K.S.A. 44-508(f) do not apply, the accident arose out of and in the course of her employment with respondent.

On January 2, 1998 claimant was involved in a one-vehicle accident on her way home from the Garden City, Kansas store. What makes this trip special is that claimant usually worked only at the Larned, Kansas store. As the ALJ found:

> Charles, the District Manager, told her if she would work in Garden City on December 31, January 1 and January 2, 1998, that she could have a weekend off. That Charles told her he would pay for her gas to Garden City and back and for her food. The Claimant stated that Charles had also stated that he would pay for a hotel if she stayed in Garden City. That she drove back and forth and did not stay in a hotel. Claimant stated that Charles put gas in her vehicle two times and on the 2nd of January, 1998, he gave her $50.00 in cash.

Respondent argues claimant's accidental injury did not arise out of and in the course of her employment with respondent because her activities did not take claimant out of the going and coming rule. Respondent contends the travel did not put claimant at a special risk or hazard and travel was not an intrinsic part of her employment.

"In general, courts construe the Workers Compensation Act liberally for the purpose of bringing employers and employees within the coverage of the Act."[3]

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[2] *See* Butera v. Fluor Daniel Construction Corporation, 28 Kan. App. 2d 542, 18 P.3d 278, *rev. denied* ___ Kan. ___ (2001).

[3] Butera at 545.

In order to receive workers compensation benefits, claimant must show that her accidental injury arose out of and in the course of her employment.[4] Whether an injury arose out of and in the course of a worker's employment is a question of fact and depends upon the facts peculiar to that case.[5] In Newman[6] the Court stated:

> "The two phrases arising 'out of' and 'in the course of' the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase 'in the course of' employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment."[7]

But K.S.A. 44-508(f) provides, in part, the following:

> "The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence."

K.S.A. 44-508(f) "bars an employee injured on the way to or from work from workers compensation coverage."[8] "The rationale for the 'going and coming' rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to

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[4] See K.S.A. 1996 Supp. 44-501(a); Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984).

[5] Brobst v. Brighton Place North, 24 Kan. App.2d 766, 955 P.2d 1315 (1997).

[6] Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

[7] Newman at Syl. ¶ 1.

[8] Chapman v. Beech Aircraft Corp., 258 Kan. 653, 655, 907 P.2d 828 (1995).

which the general public is subjected. Thus, those risks are not causally related to the employment."[9]

The Act specifically recognizes both a "premises" and a "special risk" exception to the general rule. But case law creates other exceptions including when travel is an integral or inherent part of the job, when the travel is for a special purpose and when employees are paid for their travel time and/or expenses.

In Messenger the Kansas Court of Appeals applied an exception to the "going and coming" rule that allows workers compensation coverage where travel on public roadways is an integral or necessary part of the employment.[10] An accident that occurred when Mr. Messenger was returning home from a temporary work site was held compensable because he was required to travel and provide his own transportation, he was compensated for his travel, and both Mr. Messenger and his employer benefitted from that travel arrangement. In holding that the going and coming rule did not apply, the Court of Appeals stressed the benefit that the employer derived from the travel arrangement.

> Kansas has long recognized one very basic exception to the "going and coming" rule. That exception applies when the operation of a motor vehicle on the public roadways is an integral part of the employment or is inherent in the nature of the employment or is necessary to the employment, so that in his travels the employee was furthering the interests of his employer.[11]

In Kindel,[12] the Kansas Supreme Court approved the Messenger decision and stated:

> Although K.S.A. 1991 Supp. 44-508(f), a codification of the longstanding "going and coming" rule, provides that injuries occurring while traveling to and from employment are generally not compensable, there is an exception which applies when travel upon the public roadways is an integral or necessary part of the employment. (Citations omitted.) Because Kindel and other Ferco employees were expected to live out of town during the work weeks, and transportation to and from the remote site was in a company vehicle driven by a supervisor, this case falls within the exception to the general rule.[13]

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[9] Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 46, 883 P.2d 768 (1994).

[10] Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).

[11] Messenger at 437.

[12] Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

[13] Kindel at 277.

Although respondent did not provide claimant with a company vehicle, respondent did pay for her travel, which is the equivalent.

In a more recent decision, the Kansas Court of Appeals in Brobst reiterated that accidents occurring while going and coming from work are compensable where travel is either (a) intrinsic to the job or (b) required to complete some special work-related errand or trip. The Court of Appeals stated:

> . . . Kansas case law recognizes a distinction between accidents incurred during the normal going and coming from a regular permanent work location and accidents incurred during going and coming in an employment in which the going and coming is an incident of the employment itself.
>
> Under this third qualification to the going and coming rule, injuries incurred while going and coming from places where work-related tasks occur can be compensable where the traveling is (a) intrinsic to the profession or (b) required in order to complete some special work-related errand or special-purpose trip in the scope of the employment. This third exception has been noted in several Kansas cases, many of which post-date the 1968 premises and special hazard amendments to the Workers Compensation Act.[14] (Citations omitted.)

Larson's[15] also recognizes the "inherent travel" exception to the going and coming rule.

> Several so-called "exceptions" to the basic premises rule on going and coming are applications of this principle: employees sent on special errands; employees continuously on call; and employees who are paid for their time while traveling or for their transportation expenses. The explanation of these exceptions, and the clue to their proper limits, is found in the principle that the journey is an inherent part of the service.[16]

Larson's cites numerous cases with similar facts from other jurisdictions holding that the accidents involved in those cases were compensable as they arose out of and in the course of employment.

This claim has certain similarities to the Messenger and Kindel decisions. All involved temporary work sites, accidents while traveling to or from those sites, travel arrangements that benefitted the employer, and the employer paid travel expenses. Travel was an integral part of the job in the Messenger and Kindel cases, whereas in this case the travel to another store

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[14] Brobst at 773 and 774.

[15] 1 Larson's Workers' Compensation Law.

[16] 1 Larson's Workers' Compensation Law, §14.04 (2000).

was a temporary arrangement. This case would also be analogous to the special errand exception and the exception where the employees are paid for their time or travel expenses. The Appeals Board finds that because there was a special purpose to claimant's travel at the time of the January 2, 1998 accident, her injury arose out of and in the course of her employment with respondent. The parties contemplated that those trips to Garden City would be specially treated. Therefore, the accident is compensable under the Workers Compensation Act.[17]

Based upon the above, claimant has established an exception to the going and coming rule and is entitled to receive workers compensation benefits from respondent and its insurance carrier. Therefore, the Award should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller, dated June 7, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: M. John Carpenter, Attorney for Claimant
James M. McVay, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[17] *See* Butera, *supra*.